

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77314422
LAW OFFICE ASSIGNED	LAW OFFICE 102
MARK SECTION (no change)	
GOODS AND/OR SERVICES SECTION (current)	
INTERNATIONAL CLASS	036
DESCRIPTION	Property and casualty insurance underwriting services
FIRST USE ANYWHERE DATE	At least as early as 05/31/2008
FIRST USE IN COMMERCE DATE	At least as early as 05/31/2008
FILING BASIS	Section 1(b)
GOODS AND/OR SERVICES SECTION (proposed)	
INTERNATIONAL CLASS	036
DESCRIPTION	Property and casualty insurance underwriting services
FIRST USE ANYWHERE DATE	At least as early as 05/31/2008
FIRST USE IN COMMERCE DATE	At least as early as 05/31/2008
STATEMENT TYPE	"The substitute (or new, if appropriate) specimen(s) was/were in use in commerce at least as early as the filing date of the application" [for an application based on Section 1(a), Use in Commerce] OR "The substitute (or new, if appropriate) specimen(s) was/were in use in commerce prior either to the filing of the Amendment to Allege Use or expiration of the filing deadline for filing a Statement of Use" [for an application based on Section 1(b) Intent-to-Use].
SPECIMEN FILE NAME(S)	
ORIGINAL PDF FILE	SPU0-7420315735-174202215 . CONSTRUCTION PLUS SUBSTITUTE SPECIMEN.pdf

CONVERTED PDF FILE(S) (2 pages)	\\TICRS\EXPORT11\IMAGEOUT11\773\144\77314422\xml9\RFR0002.JPG
	\\TICRS\EXPORT11\IMAGEOUT11\773\144\77314422\xml9\RFR0003.JPG
SPECIMEN DESCRIPTION	webpage from Travelers.com
ADDITIONAL STATEMENTS SECTION	
MISCELLANEOUS STATEMENT	Please see the attached argument text regarding Applicant's proposed amendment to its drawing.
MISCELLANEOUS FILE NAME(S)	
ORIGINAL PDF FILE	mis-7420315735-174202215 . CONSTRUCTION PLUS Request for Reconsideration.pdf
CONVERTED PDF FILE(S) (3 pages)	\\TICRS\EXPORT11\IMAGEOUT11\773\144\77314422\xml9\RFR0004.JPG
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SIGNATURE SECTION	
DECLARATION SIGNATURE	/rrf/
SIGNATORY'S NAME	Robin Ramswick Fuller
SIGNATORY'S POSITION	Senior Counsel
DATE SIGNED	10/04/2011
RESPONSE SIGNATURE	/Elizabeth E. Brenckman/
SIGNATORY'S NAME	Elizabeth E. Brenckman
SIGNATORY'S POSITION	Attorney of record, MN bar member
DATE SIGNED	10/04/2011
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO
FILING INFORMATION SECTION	
SUBMIT DATE	Tue Oct 04 18:09:29 EDT 2011
	USPTO/RFR-74.203.157.35-2 0111004180929607818-77314

TEAS STAMP

422-4803a4899a3fa7dafa1ea
8f8ce8aa4b31e6-N/A-N/A-20
111004174202215175

PTO Form (Rev 4/2000)
OMB No. 0651-.... (Exp. 08/31/2004)

Request for Reconsideration after Final Action To the Commissioner for Trademarks:

Application serial no. **77314422** has been amended as follows:

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 036 for Property and casualty insurance underwriting services

Original Filing Basis:

Filing Basis: Section 1(b), Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

In International Class 036, the mark was first used at least as early as 05/31/2008 and first used in commerce at least as early as 05/31/2008.

Proposed: Class 036 for Property and casualty insurance underwriting services

Deleted Filing Basis: 1(b)

In International Class 036, the mark was first used at least as early as 05/31/2008. and first used in commerce at least as early as 05/31/2008.

Applicant hereby submits a new specimen for Class 036. The specimen(s) submitted consists of webpage from Travelers.com.

"The substitute (or new, if appropriate) specimen(s) was/were in use in commerce at least as early as the filing date of the application" *[for an application based on Section 1(a), Use in Commerce]* OR **"The substitute (or new, if appropriate) specimen(s) was/were in use in commerce prior either to the filing of the Amendment to Allege Use or expiration of the filing deadline for filing a Statement of Use"** *[for an application based on Section 1(b) Intent-to-Use].*

Original PDF file:

[SPU0-7420315735-174202215_.CONSTRUCTION_PLUS_SUBSTITUTE_SPECIMEN.pdf](#)

Converted PDF file(s) (2 pages)

[Specimen File1](#)

[Specimen File2](#)

ADDITIONAL STATEMENTS

Please see the attached argument text regarding Applicant's proposed amendment to its drawing.

Original PDF file:

Converted PDF file(s) (3 pages)

[Miscellaneous File1](#)

[Miscellaneous File2](#)

[Miscellaneous File3](#)

SIGNATURE(S)

Declaration Signature

If the applicant is seeking registration under Section 1(b) and/or Section 44 of the Trademark Act, the applicant has had a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. 37 C.F.R. Secs. 2.34(a)(2)(i); 2.34 (a)(3)(i); and 2.34(a)(4)(ii); and/or the applicant has had a bona fide intention to exercise legitimate control over the use of the mark in commerce by its members. 37 C.F. R. Sec. 2.44. If the applicant is seeking registration under Section 1(a) of the Trademark Act, the mark was in use in commerce on or in connection with the goods and/or services listed in the application as of the application filing date or as of the date of any submitted allegation of use. 37 C.F.R. Secs. 2.34(a)(1)(i); and/or the applicant has exercised legitimate control over the use of the mark in commerce by its members. 37 C.F.R. Sec. 2.44. The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; that if the original application was submitted unsigned, that all statements in the original application and this submission made of the declaration signer's knowledge are true; and all statements in the original application and this submission made on information and belief are believed to be true.

Signature: /rrf/ Date: 10/04/2011

Signatory's Name: Robin Ramswick Fuller

Signatory's Position: Senior Counsel

Request for Reconsideration Signature

Signature: /Elizabeth E. Brenckman/ Date: 10/04/2011

Signatory's Name: Elizabeth E. Brenckman

Signatory's Position: Attorney of record, MN bar member

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing

him/her as an associate attorney in this matter.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 77314422

Internet Transmission Date: Tue Oct 04 18:09:29 EDT 2011

TEAS Stamp: USPTO/RFR-74.203.157.35-2011100418092960

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Construction

The best insurance and risk management solution is the one you help us design and deliver. Our resources, hands-on construction experience and industry knowledge are focused on becoming your best option for insurance and risk management so that you can focus on meeting your customer needs.



Year after year, contractors and their agents choose Travelers to help manage construction risk because we understand their unique risks, listen, identify needs and collaboratively develop individual account approaches that are in-synch with their needs. We work hard to deliver outstanding customized service and quality products with a willingness to consider solution-based, mutually satisfying approaches.

Value Proposition – A Unique Market Approach

- Flexible program structures
- Willingness to consider solution-based approaches
- Team approach to service planning and stewardship to help anticipate exposures and identify trends
- Focus on underwriting responsiveness, experienced claim handling, risk control and policy administration to help manage contractors' total cost of risk

Customer Profile

- Account size \$50,000-\$10 million
- General contractors
 - Commercial
 - Industrial
- Heavy construction contractors
 - Street and road/infrastructure contractors
 - Site and utility contractors
- Specialty trade contractors
 - Interior trades
 - Exterior trades
- ConstructionPlusSM for smaller trade and heavy contractors
- Wrap-up coverages for contractor-controlled programs

Products

- General liability, auto liability, workers compensation and umbrella
- Guaranteed cost and loss responsive
- Owners and contractors protective liability (OCP) and railroad protective liability (RRP)
- Property and inland marine coverages to round out customers' portfolios

Managing the Cost of Risk

- Tailored underwriting by account size, contractor type, geographic area and line of business
- Local-market knowledge and decision-making
- Highly focused, collaborative team approach to risk management among underwriting, claim and risk control specialists
- Pricing, coverage and services for moderate, mid- and large-sized accounts
- Specialized insurance and risk management experience for large construction businesses that require programs aligned with risk appetite and financial goals

Specialized Services for Contractors

Dedicated Construction Risk Control Services

- Commitment to contractor safety delivered by more than 140 field-based Construction risk control specialists
- Contractor-specific programs designed according to risk, budget and areas of operation
- Experienced risk control specialists focused on the needs of the contractor
- Emphasis on contractual risk management and effective contractual risk transfer (CRT) to help manage the cost of risk
- Specialized programs including fleet, crane and work-zone safety, safety training and safety management, ergonomics and fall protection
- Travelers Risk Control website housing an extensive portfolio of products and services — providing easy access to a broad range of information that can help address the safety challenges faced by contractors
- State-of-the-art accredited Industrial Hygiene & Laboratory Analytical Services available to support your industrial hygiene needs. Services include a Pump Loan Program and Instrument Rental with access to staff dedicated to the needs of contractors
- Award-winning Safety Academy with a course catalog of more than 40 construction classes. Over 200 seminars held annually across the country

Dedicated Construction Claim Services

- Over 450 dedicated construction claim professionals strategically placed in more than 60 locations
- Management of all aspects of the claim focused on protecting contractors' interests, handling claims fairly and managing contractors' cost of risk
- Claim professionals specialized by line of business average 20+ years in industry claim handling
- Claim account executives work with customers to identify claim trends and troubleshoot issues
- Nurse case managers review and manage workers compensation medical care
- Major Case unit to handle high-severity claims
- Subrogation and CRT experience; coverage counsel to assist with CRT issues
- Dedicated Construction Defect Claim unit

Risk Management Information Services (RMIS)

- Real-time claim access, claim rosters and claim alerts
- Field-based RMIS specialists support users
- e-CARMA®, an industry-leading RMIS, further supports the information needs of larger businesses

Please Contact Us for More Information

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SERVICE MARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: The Travelers Companies, Inc.	
Serial No: 77/314,422	
Filed: October 26, 2007	Law Office: 102
Mark: CONSTRUCTION PLUS	Trademark Attorney: Michael Webster
Docket No: 41-2089	

REQUEST FOR RECONSIDERATION

Applicant requests reconsideration of the Final Office Action mailed on April 7, 2011, regarding the above-identified trademark application.

REMARKS

The Examining Attorney maintained his rejections in connection with Applicant's mark. They are (I) proposed amendment to drawing unacceptable; and (II) drawing does not match mark on specimen. Applicant will again address each issue in turn.

I. PROPOSED AMENDMENT TO DRAWING UNACCEPTABLE

The Examining Attorney maintained his rejection of Applicant's proposed amendment of the drawing of its mark from CONSTRUCTION PLUS to CONSTRUCTIONPLUS+. The Examining Attorney claimed that the addition of the plus symbol at the end of the mark changes the commercial impression of the mark; however, the Examining Attorney did not offer any reasoning nor cite any prior Trademark Trial and Appeal Board ("TTAB") decisions to support his claim. Instead, he vaguely concluded that "the addition of the symbol '+' does more than emphasize the term literal element." He also stated, "Here, the addition of the plus symbol at the end of the mark adds to the original drawing the impression of a double plus"—again without citing any supporting claims or analogous TTAB decisions.

The TMEP requires the Examining Attorney to *carefully* consider all arguments, comments, and amendments made or proposed by the applicant. TMEP § 713 (emphasis added). Additionally, the TMEP states that, "When the applicant submits arguments attempting to

overcome a refusal or requirement, the examining attorney *must* respond to the applicant's arguments." TMEP § 713.03 (emphasis added). In this case, the Examining Attorney failed to directly address Applicant's arguments, and provided little support and no evidence to bolster his own arguments, suggesting that the Examining Attorney did not carefully consider Applicant's arguments and supporting case law as required.

The Examining Attorney stated that the "cases cited by Applicant do not support its argument that the addition of the plus sign does not change the commercial impression of the drawing," but then went on to mention just one of the cases Applicant cited in support of its argument. He summarized the holding of *In re Flanders Corporation*, which held that the plus symbol in the amended drawing of SWISS+AIRE did *not* add to the commercial impression of the original mark SWISSAIRE (which, in fact, actually **supports** Applicant's position). It is worth reiterating that the TTAB's reasoning in *Flanders* directly applies to the case at hand. In *Flanders*, the TTAB stated, "The 'plus sign,' if it is considered as the examining attorney argues a part of the Swiss flag, does not add anything additional to the mark inasmuch as the term 'Swiss' is clearly already a part of the mark. . . . If it is considered to be a simple 'plus' sign, this mathematical symbol would be similar to the hyphen that the board in *R.J. Reynolds* found to not be significant." 2006 WL 1151399 (TTAB 2006). Similarly, the plus symbol in Applicant's amended drawing does not add anything additional to the mark inasmuch as the term PLUS is clearly already part of the mark.

The Examining Attorney then stated that Applicant's argument that the addition of the plus symbol would not require a further search is incorrect. He went on to conclude that "Whether the both the term 'plus' and the symbol '+' have been searched is irrelevant." Applicant again reviewed the Examining Attorney's original search. Based on the search criteria, it is apparent that another search is not necessary. The Examining Attorney already conducted a search for marks that include the term PLUS or the symbol +. Therefore, any mark containing *both* the term PLUS and the symbol + would have already been identified in the original search. Searching for the combination of "plus" and "+" would only further *narrow* the search. It is notable that the question of whether a new search is even necessitated by the amendment is *relevant, but not determinative*. McCarthy on Trademarks § 19:58.50, TMEP § 807.14.

Applicant's position that the addition of the plus symbol to the amended drawing is not a material alteration is supported by many TTAB decisions that have held that more significant

changes (including the addition or deletion of words) are *not* material alterations. *In re Larios, S.A.*, 35 USPQ 2d 1214 (TTAB 1995) (VINE DE MALAGA LARIOS not material alteration of GRIN VINE MALAGA LARIOS); *In re Findlay Jewelry Corp.*, 41 USPQ 2d 1152 (TTAB 1996) (NEW YORK JEWELRY OUTLET not material alteration of NY JEWELRY OUTLET); *In re Robert Fox, Inc.*, 2004 WL 2368458 (TTAB 2004) (stating that “the addition of the exclamation point is clearly not a material alteration”). Further, the TTAB has repeatedly held that common geometric designs and shapes are not distinctive, and have very little source significance because they are not likely to be used by average consumers to distinguish goods or services. See *In re Marc Lenaerts*, 2007 WL 3336399 (TTAB 2007); *Nike, Inc. (Substituted for Official Starter LLC) v. WNBA Enterprises, LLC*, 85 USPQ 2d 1187 (TTAB 2007); *Laurence Altshuler, M.D., P.C. v. Flanagan, Gail L.*, 2007 WL 117544 (TTAB 2007); *In re Tracy Nixon*, 2005 WL 1285662 (TTAB 2005).

Applicant respectfully submits that a careful analysis of its arguments and the cited TTAB decisions can lead only to the conclusion that the mere addition of a plus symbol to form CONSTRUCTIONPLUS+ is not a material alteration of the mark CONSTRUCTION PLUS. Because the amended drawing creates the impression of being essentially the same mark, Applicant requests that the Examining Attorney accept the proposed amendment.

II. DRAWING DOES NOT MATCH MARK ON SPECIMEN

The Examining Attorney maintained his rejection of Applicant’s specimen, stating that the mark on the specimen disagrees with the mark in the drawing. In response, Applicant has submitted a substitute specimen as suggested by the Examining Attorney.

CONCLUSION

All matters raised by the Examining Attorney having been addressed, Applicant respectfully requests that the application be approved for publication and eventual registration.